Before the
Federal Communications Commission
Washington, D.C.20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES IN RESPONSE TO SECTIONS XVII. L THROUGH R OF THE FURTHER NOTICE OF PROPOSED RULEMAKING

Dated: February 24, 2012

The Nebraska Rural Independent Companies

Paul M. Schudel (NE Bar No. 13723)
James A. Overcash (NE Bar No. 18627)
Woods & Aitken LLP
301 South 13th Street, Suite 500
Lincoln, NE68508
(402) 437-8500

Thomas J. Moorman
Woods & Aitken LLP
2154 Wisconsin Ave. NW, Suite 200
Washington, D.C.20007
(202) 944-9502
Their Attorneys

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SUMMARY OF COMMENTS

The Nebraska Rural Independent Companies ("NRIC") hereby file these Comments in response to Sections XVII. L through R of the "Further Notice of Proposed Rulemaking" ("*FNRPM*") of the Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90., *et al*., FCC 11-161 (the "*Report and Order*"), released November 18, 2011.

While NRIC supports reform of originating access, such reform must be consistent with applicable legal requirements (not preemptive), be rational (not on a bill-and-keep basis), and provide rate-of-return eligible telecommunications carriers ("ROR ETCs") with proper cost recovery for the use of their networks by interexchange carriers ("IXCs") that provide the toll service to the end users who make long distance calls using the ROR ETCs' facilities. NRIC respectfully submits that the Commission does not have the legal authority to mandate universal bill-and-keep for originating access for the reasons set forth in the following Comments. With regard to interstate originating access, any Commission-ordered reductions in current rates should only be accomplished in tandem with sufficient and predictable recovery of the costs of IXCs' use of ROR ETCs' networks through the Recovery Mechanism ("RM"), originating access rates, or a combination of both.

NRIC urges the Commission to proceed with consideration of interstate access reform for originating access at this time rather than deferring action until completion of the transition to bill-and-keep for terminating access (in 2020). NRIC believes that prompt and legally sustainable action by the Commission with respect to interstate originating access will benefit rural consumers by preserving affordable long distance service for these consumers which is essential for such consumers to make and receive interexchange voice calls. In doing so, the lawful recovery of originating access costs should be made available to all ROR ETCs, regardless of whether that ROR ETC has a long distance affiliate or operations.

Proper recovery associated with the originating network functions provided by a ROR ETC related to 8YY and equal access traffic must be provided in any originating access reform. Originating 8YY traffic constitutes between 20 and 36 percent of originating minutes of use for the companies that comprise NRIC. Pre-subscribed long distance equal access traffic is typically also a significant portion of originating traffic for these companies. Intercarrier compensation or another form of cost recovery for this traffic is necessary and appropriate based upon cost causation principles and the common sense notion that the IXC using a ROR ETC's network should compensate the ROR ETC for such use. Any other resolution will result in the use of the ROR ETC's originating access network without compensation.

Any preconception by the Commission that cost recovery associated with the mechanisms adopted in the *Report and Order* as well as pre-existing subscriber line charges ("SLCs") will be eliminated or reduced as carriers transition to broadband networks should be rejected. NRIC cannot envision a future scenario in which some or all of these mechanisms will be unnecessary in order to provide for the recovery of the costs of any network capable of providing voice and broadband services. In rural areas, broadband-capable networks are, if anything, more costly than voice-only networks. Accordingly, NRIC respectfully submits that any reform of SLCs generally, and Connect America Fund ("CAF") support in particular, must recognize that these mechanisms are essential to the recovery of costs that a ROR ETC incurs and should remain in place unless and until other revenue sources materialize and are explicitly and fairly measured by future Universal Service Fund ("USF") mechanisms. Moreover, because SLCs and the Access Recovery Charge ("ARC") are essentially local rate additives, these charges must also remain integral components for determining whether a local rate is comparable for purposes of CAF recovery.

The Commission's decision to adopt bill-and-keep does not necessitate a change in the interconnection rules that already exist in the Act. Rather, the proper interpretation and application of those rules should be reaffirmed in order to avoid the improper shifting of costs to rural incumbent local exchange carriers ("ILECs"). NRIC respectfully suggests that the Commission: (1) reiterate the status of Section 251 requirements regarding interconnection; (2) reaffirm the principles contained within the statute that a point of interconnection ("POI") must be within the ILEC's network; (3) clearly indicate that "superior" forms of interconnection are unlawful; and (4) reaffirm the consistency of these principles with that which the Commission has already enunciated regarding "escalating" levels of interconnection obligations. Likewise, NRIC respectfully requests that the Commission avoid inaccurate statements regarding alleged industry-wide interconnection arrangements being required of rural LECs, specifically rejecting the assertion that a "single POI per LATA" requirement exists with regard to rural ILECs. Further, consistent with the Act's requirements, the Commission also should affirm that, regardless of the form of intercarrier compensation arrangement (*i.e.*, bill-and-keep or otherwise), the terminating rural ILEC would not be expected to incur additional costs beyond the "edge" of the rural ILEC's network, *i.e.*, the point of interconnection located within its network. Finally, rural ILECs should not be required to undertake the administratively burdensome and time-consuming process of negotiating and entering into interconnection agreements regarding access arrangements. Rather, rural ILECs should be allowed to continue to file tariffs subject to approval by appropriate regulatory authorities governing the rates, terms and conditions for the provision of access services.

Finally, with respect to interconnection regarding Internet Protocol ("IP") and Time Division Multiplex ("TDM"), NRIC respectfully submits that the primary goal of the Commission should be to provide an interconnection framework that is lawful and that provides an opportunity for reasonably priced and comparably priced services to consumers. Therefore, NRIC does not believe that there is any need to "reinvent-the-wheel" for IP-to-IP interconnection or for intercarrier compensation obligations regarding IP-to-TDM voice traffic or TDM-to-IP voice traffic. The interconnection framework that clearly defines proper interconnection arrangements for the exchange of traffic under Section 251/252 has been in place for 16 years. Use of North American Numbering Plan resources in the context of voice traffic as a trigger for applying the Section 251/252 framework should be made clear. The principles enunciated under Section 251 – and in particular that any POI must be at a technically feasible location within the ILEC's network – ensure that parties seeking an IP interconnection cannot impose on the terminating ILEC obligations and costs that are their own responsibility under the law. Likewise, the Section 251/252 framework invalidates any claim that a carrier can avoid making intercarrier compensation payments because it has requested IP-related interconnection pursuant to a commercial agreement that is *not* subject to regulatory oversight. Lastly, the Commission should adopt overall IP technical standards after review and consultation with the industry to avoid even the appearance of technical incompatibility as well as undermining the expectation that calls will be completed.

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COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES IN RESPONSE TO SECTIONS XVII. L THROUGH R OF THE FURTHER NOTICE OF PROPOSED RULEMAKING

The Nebraska Rural Independent Companies ("NRIC"),[1] which provide telecommunications and broadband access services to some of the most-rural, sparsely populated parts of America, appreciate the opportunity to submit these Comments in response to Sections XVII. L through R of the Further Notice of Proposed Rulemaking issued by the Federal

[1] The Companies, each of which is a Local Exchange Carrier ("LEC"), submitting these Comments are: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Co., K. & M. Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telecom Inc., and Three River Telco.

Communications Commission (the "Commission").[2] The number of matters that are open for comment precludes NRIC from commenting on many issues. However, NRIC reserves the right to file reply comments on any matter raised in the comments on Sections XVII. L through R of the *FNPRM*. Moreover, notwithstanding legal challenges and reconsideration requests that have been filed with respect to the *Report and Order* and without waiver of the positions that NRIC may take on such issues,[3] these comments will presume the starting point for analysis will be the conclusions made in the *Report and Order* and *FNPRM* and results arising therefrom**.**

I. RATIONAL ORIGINATING ACCESS REFORM, WHILE DESIRABLE, MUST BE CONSISTENT WITH APPLICABLE LEGAL REQUIREMENTS, INCLUDING PROVISION FOR PROPER COST RECOVERY.

The Commission seeks comment on the need for an additional transition for originating access as part of the "final transition" to bill-and-keep,[4] presumably based on the conclusion that originating access rates will be reduced to zero along with terminating access rates.[5] The Commission also seeks comment on the treatment of originating access with respect to 8YY and

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[2] *See,* Report and Order and Further Notice of Proposed Rulemaking, Public Notice, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, released November 18, 2011. In these Comments, references to paragraphs 1 through 1011 will be noted as being from the *"Report and Order"* and references to paragraphs 1012 through 1403 will be noted as being from the "*FNPRM*".

[3] NRIC notes that reconsideration requests have been filed regarding certain aspects of the *Report and Order* and petitions for review of the Commission's action have been consolidated in the United States Court of Appeals for the Tenth Circuit (the "Tenth Circuit"). Nothing in these comments can be or should be used as a means of thwarting consideration of the substantive positions raised or to be raised by NRIC in response to the reconsideration requests or with regard to the petitions for review pending before the Tenth Circuit.

[4] *See generally, FNPRM* at paras. 1297-1305.

[5] *See, id*. at para. 1298.

equal access traffic.[6] As NRIC has demonstrated, however, originating access revenues remain an essential part of overall network cost recovery for rate-of-return ("ROR") Eligible Telecommunications Carriers ("ETCs") like each of the NRIC companies.[7] Accordingly, for the reasons stated below, while NRIC supports reform of originating access, such reform must be consistent with applicable legal requirements (not preemptive), be rational (not on a bill-and-keep basis), and provide ROR ETCs with proper cost recovery for the use of their networks by interexchange carriers ("IXCs") that provide the toll service to the end user who make the long distance call using the ROR ETC's facilities.

A. The Commission Should Not Adopt Bill-and-Keep for Originating Access, but Should Implement Timely and Legal Originating Access Reforms.

The Commission does not have authority to mandate universal bill-and-keep for originating access. Nevertheless, the Commission should take timely and legally sustainable action regarding originating access to ensure the viability of long distance services in rural areas such as those served by the companies that comprise NRIC.

In pursuing timely and legally sustainable originating access reform for interstate traffic, the Commission should address reductions in originating access in a lawful manner (not to zero) and provide sufficient and predictable cost recovery associated with the use by IXCs of the originating networks of ROR ETCs. That cost recovery should be provided either through originating access rates, the Recovery Mechanism ("RM") or a combination of both.

On the intrastate side, the Commission should create incentives for states to identify needed reductions in originating intrastate access charges (but not to zero), and to provide

[6] *See, id*. at para. 1304.

[7] *See,* Comments of the Nebraska Rural Independent Companies, WC Docket No. 10-90, *et al.*, filed April 18, 2011 at 25-34.

recovery for any such reductions. The Commission should also provide for recovery of revenue lost to intrastate rate reductions through a combination of federal and incentivized state sources to the extent necessary to recover the reasonable costs of providing service.

1. The Commission Does Not Have Authority to Mandate Universal Bill-and-Keep for Originating Access.

The Commission has set forth its legal rationale for setting all terminating rates at bill-and-keep under Section 251(b)(5). NRIC believes that the Commission's past actions to reduce all terminating access rates to bill-and-keep illegally preempts states' authority over intrastate access and violates the "additional cost" standard in Section 251(b)(5). Furthermore, NRIC respectfully submits that Section 251(g) of the 1996 revisions to the Communications Act of 1934, as amended (the "Act") cannot be relied upon to alter these conclusions.[8] NRIC suggests that, for the same reasons, the Commission cannot mandate bill-and-keep for originating access.

The *FNPRM* appears to indicate the Commission's awareness of this questionable legal authority.[9] Further, even if the Commission is able to find an appropriate vehicle for implementing bill-and-keep for interstate originating access, it does not have this authority regarding intrastate originating access.[10] Any contention that Section 251(g) of the Act permits this result is equally contrary to applicable law.[11]

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[8] Those issues will not be otherwise addressed in these comments, as they will be addressed on appeal.

[9] *See*, *FNPRM* at para. 1298, which states: "As we acknowledge in the Order, section 251(b)(5) does not explicitly address originating charges."

[10] *See, Report and Order* at para. 778.

[11] *See*, Comments of the Nebraska Rural Independent Companies in Response to August 3, 2011 Further Inquiry, WC Docket No. 10-90, *et al.*, filed Aug. 24, 2011 at 16-22; and Reply Comments of the Nebraska Rural Independent Companies in Response to August 3, 2011 Further Inquiry, WC Docket No. 10-90, *et al.*, filed Sept. 6, 2011 at 32-35.

By ordering bill-and keep for terminating access, the Commission has created legal wrangling and uncertainty. The Commission should not exacerbate those existing legal problems by ordering the same approach regarding originating access.

2. The Commission Should Take Timely Action Regarding Originating Access to Ensure the Viability of Long Distance Services in Rural Areas such as Those Served by the Companies that Comprise NRIC.

NRIC respectfully submits that timely and lawful action regarding originating access is required to ensure the viability of long distance services in the rural areas such as those served by the companies that comprise NRIC. If action on originating access is deferred until 2020, the Commission will be creating a risk that some rural consumers will no longer have reasonably affordable long-distance service.

Based on the *FNPRM*, NRIC is concerned that the Commission may not address the future of originating access until the completion of the transition to bill-and-keep for terminating end office switching.[12] Thus, for ROR ETCs, no originating access reforms would occur until after 2020. Moreover, given the scant attention to originating services in the *Report and Order*, it appears that the Commission may be inclined to do nothing concerning originating access, leaving its future to the market to determine. Legally proper and timely action by the Commission, in conjunction with state commissions, regarding originating access must occur. Such action will benefit end users in rural areas by helping to ensure the continuation of reasonably priced long distance service.

Originating access is still an important source of revenue for the companies that comprise NRIC. Based on a survey of several of those companies, originating access accounts for

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[12] *See*, *FNPRM* at para. 1299.

between 5 and 20 percent of total regulated telecommunications revenues of individual companies, inclusive of access, local service and related revenues, and federal and state universal service support. The steady erosion of those revenues, creates a risk that some ROR ETCs may no longer be able to provide originating access to IXCs in the future, thereby jeopardizing the continuation of reasonably priced long distance service.

NRIC is concerned that the Commission may believe that all rural end users have long-distance choices other than through wireline service. However, for large numbers of customers of the companies that comprise NRIC located in very rural parts of Nebraska, wireline long-distance service is the *only* telecommunications service available at their homes and businesses for making and receiving interexchange, long distance voice calls. While wireless service may be available sporadically in rural areas, based on the operating experience of the companies that comprise NRIC, it is not a substitute service. Thus, wireline-based long-distance service is not an ancillary service for these customers; it is a necessity and is protected by the universal service provisions in federal law.

Accordingly, for the above reasons, NRIC respectfully submits that prompt and legally sustainable action by the Commission with respect to originating access cannot wait. Long-distance markets will benefit from such reform, benefits that should be realized in actual reductions in real-world rates paid by rural end users that require and need these services. Equally important to lowering rates, of course, is ensuring the continuation of service. As the Commission lawfully reforms originating access, thereby providing a basis for proper reductions in such access rates, it should provide for recovery of lost access revenues through a combination of originating access rates, the RM or a combination of both, to cover the reasonable costs of providing service.

3. Recovery of ROR ETCs' Originating Access Reductions Should Be Available Regardless of Whether a Carrier has a Long-Distance Affiliate.

In the *FNPRM*, the Commission notes that certain rural incumbent LECs ("ILECs") provide retail long-distance service through affiliates and asks whether recovery of originating access reductions should be limited only to ILECs without affiliates.[13] There is no rational basis for such a limitation, particularly when rural ILECs rely upon originating access charge revenues as an integral component of their regulated cost recovery.

NRIC is concerned that the Commission may be moving down a path without a factual basis. The Commission suggests in the *FNPRM* that originating access is "simply 'an imputation, not a real payment.'"[14] While this may be the case in situations where the ILEC is also the facilities-based IXC, it is typically not the case for the long distance affiliates of ROR ETCs. Rather, the payment of access charges is real regulated tariff-derived revenue. For ROR ETCs, originating access revenue is an integral component of overall regulated cost recovery. As indicated above, based on a survey of several of the Companies that comprise NRIC, originating access accounts for between 5 and 20 percent of total regulated telecommunications revenues of individual companies, inclusive of access, local service and related revenues, and federal and state universal service support. In a typical rural area where the ROR ETC has an affiliated long-distance provider, that provider is a reseller of an underlying facilities-based IXC's service. The reseller does not pay the ROR ETC any access. Rather, the ROR ETC charges access to and collects access from the underlying facilities-based IXC. Therefore, the

[13] *See*, *FNPRM* at para.1300 (footnote omitted).
[14] *Id*.

ROR ETC's revenue dependence is just as real as if there were no affiliate and the end user directly subscribed to the facilities-based IXC.

If access charges are legally reduced through coordinated actions between the Commission and state commissions, as NRIC recommends, then it is also appropriate and necessary that ROR ETCs are provided proper recovery from replacement revenues where necessary, including recovery from appropriate universal service mechanisms. Because regulated originating access charges recover real network costs, replacement revenues are an absolute necessity. To conclude otherwise would ignore the tenets of ROR regulation and the opportunity for a ROR ETC to recover its costs and earn a reasonable return.

Moreover, providers should not be forced to make costly rural networks available to competitors free of charge, a result untenable in any competitive marketplace. In competitive markets, when one entity uses the property of another entity in connection with production of a good or service, a payment is made to compensate the entity whose property is used. Where the network of an ROR ETC is being used by another carrier, that carrier should pay for that use. In the case of the telecommunications market, access charges are the appropriate means to provide payment for the use of the network. These common sense notions should be reflected in any determination by the Commission.

B. For 8YY Traffic, as Well as Originating Long-Distance Under an Equal Access Mandate, the Originating Local Exchange Carrier Should Receive Intercarrier Compensation for the Use of Its Network Because It Does Not Otherwise Receive Compensation for Calls.

1. 8YY Traffic and Originating Presubscribed Long-Distance Traffic are Significant Portions of the Originating Traffic of the Companies Comprising NRIC.

The Commission properly recognizes the need to ensure that its conclusions reached with respect to transition to a bill-and-keep regime for originating traffic are fact-based.[15] Thus, NRIC appreciates the opportunity to update the record with respect to not only 8YY traffic but also originating traffic associated with equal access.[16]

As noted by the Commission, in response to the *August 3 Public Notice* request for data and comment on the relative proportion of 8YY originated minutes compared to traditional originated minutes,[17] NRIC estimated that approximately 20 to 30 percent of originating traffic is to an 8YY number, while Texas Statewide Telephone Cooperative, Inc. ("TSTCI") suggested that this figure could be as high as 50 percent.[18] NRIC now updates that earlier data and notes that the percentage of originating traffic to an 8YY number currently ranges from 20 to 36 percent for the companies that comprise NRIC. Accordingly, the amount of 8YY traffic is significant for these companies and such traffic must have a "distinct" resolution provided for it.[19] That same conclusion is also applicable with respect to originating access traffic that is subject to equal access.

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[15] *Id.* at para. 1304.

[16] *Id*. at fn. 2354.

[17] *See*, Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, Public Notice, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, DA 11-1348, released August 3, 2011 at 16.

[18] *FNPRM* at fn. 2354 (citing comments of NRIC and TSTCI).

[19] *Id*. at para. 1304.

Originating traffic is either 8YY or provided under the equal access mandate. In either of these cases, the RLEC should receive compensation for the use of its local facilities. Since the ROR ETC is typically not a facilities-based long-distance provider, the ROR ETC will receive no compensation other than through access charges for the use of its originating network which is required to allow these long distance calls to be completed. If the Commission chooses to set access rates at zero, then IXCs would be allowed to use the RLEC's local facilities without paying for such use.

2. Intercarrier Compensation or Some Other Form of Recovery is Necessary for 8YY Traffic and Traffic Subject to Equal Access Requirements.

The foundational premise for the recovery of the costs of deploying and operating the network has been based on "cost-causation" principles. Where an entity uses another carrier's network, that entity pays the carrier for such service out of the retail revenues that the entity (which in the case of a long distance call is the IXC) receives from the end user either making the call (such as in the case of a "1+" call) or arranges for calls to be terminated to it (such as in the case of an 8YY call).

Applying this common sense notion in the areas of 8YY and all other originating access traffic, the IXC providing its toll services should pay to originate calls on the ROR ETC's network because it is that IXC that receives the retail revenue for the call. Except where the originating LEC is the toll provider to the end user, the ROR ETC has no retail relationship with the end user originating a long distance call. The retail relationship for the call exists between the IXC and the end user, and the wholesale relationship for the call exists between the IXC and the ROR ETC caused by the IXC's use of the ROR ETC's network.

In the context of 8YY traffic, the Commission stated that "the calling party chooses the access provider but does not pay for the long-distance call, it has no incentive to select a provider with lower originating access rates."[20] This fact is not relevant to cost recovery. Equally irrelevant is whether at the role of the originating ILEC "is more akin to the traditional role of the terminating LEC in that the IXC carrying the 8YY traffic must use the access service of the LEC subscribed to by the calling party."[21] Unfortunately, in each of these instances, the Commission's statements miss the point. Regardless of whether the traffic is originating 8YY traffic or whether the traffic is originating or terminating long-distance traffic subject to presubscription, the real issue is whether the originating ROR ETC's network is being used and whether compensation for such use is properly due and owing from the IXC. In both the case of 8YY traffic and originating access delivered to the end user's presubscribed IXC, the answer to this question is undeniably "yes." Where the ROR ETC's originating access network is being used by the IXC, either intercarrier compensation ("ICC"), RM or a combination of both is required to be paid to the ROR ETC. This conclusion applies regardless of whether the end user is making an 8YY call or a call that is subject to the local service provider's equal access/presubscription requirements.

For 8YY traffic, in particular, the originating local service provider would not receive compensation for the origination and transport of 8YY calls under a "bill-and-keep" compensation regime. Only the 8YY provider, which is the IXC that provides the long distance calling associated with the 8YY number, receives compensation from the customer that purchases the service from the IXC that terminates to the 8YY number.[22] As a result, the LEC

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[20] *FNPRM* at para.1303.

[21] *Id.*

[22] With 800 database access service and its optional features, including time of day routing,

whose network is used to originate the call must assess access charges to that 8YY provider, unless and until the Commission establishes some alternative mechanism such as the RM or some mixture of both access charges and RM. Without this compensation, an 8YY provider would be receiving a "free ride" on the network of the ROR ETC, a result that defies common sense and, for example, contradicts the requirement that, under ROR regulation, a carrier is provided the opportunity to recover its cost and earn a reasonable return.

The same situation exists for originating access in an equal access environment. As the Commission is aware, its equal access/presubscription rules provided in 47 C.F.R. §§ 51.209 and 51.213 require that traffic subject to those rules to be delivered from an end user to the presubscribed IXC. Only the presubscribed IXC receives the retail charge for any long-distance calls made by the end user. Thus, it is rational that the IXC use part of that retail revenue to pay for the use of the ROR ETC's network.

The practicalities of network deployment also require this same result. In the absence of proper cost recovery from ICC, the RM or a combination of both, IXC traffic levels could force a local service provider into a "Hobson's Choice" – either refuse to deploy additional network facilities and let calls "drop" (with the attendant disapproval of both customers and regulators), or incur unlimited and inefficient network service costs without reimbursement. The Commission should avoid this result.

Accordingly, in both the case of 8YY traffic and of equal access/presubscription long-distance traffic, the originating LEC incurs the cost to originate and transport the call; but with ICC rates set at "zero," the originating LEC does not receive any compensation. The IXC, or its customer, receives the benefit of the LEC's network and would receive a "free ride" on the

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multiple facilities-based IXCs may be involved in providing the underlying service. *See, e.g.*, National Exchange Carrier Association, Inc., Tariff F.C.C. No. 5, § 6.1.3(A)(10).

LEC's originating network under a "bill-and-keep" regime. Any notion of such windfalls or free rides should be eliminated. An IXC must pay for the network it uses but does not own.

II. END USER CHARGES AND CONNECT AMERICA FUND ICC SUPPORT ARE MECHANISMS FOR RECOVERY OF INCURRED COSTS AND MUST CONTINUE TO BE A COMPONENT OF THE RATE COMPARABILTY REQUIREMENTS OF SECTION 254.

In the introduction of Section XVII. O of the *FNPRM,* the Commission requests comment on the "long-term elimination" of the recovery mechanisms it adopted in the *Report and Order* as well as pre-existing subscriber line charges ("SLCs"). Apparently, this inquiry is based upon the erroneous notion that the cost recovery associated with these rate elements will be eliminated or reduced "as carriers increasingly transition to broadband networks."[23] Any preconception by the Commission in that regard should be rejected. NRIC cannot envision a future scenario in which some or all of these mechanisms will not need to continue in order to provide for the recovery of the cost of any network capable of providing voice and broadband services. In rural areas, broadband-capable networks are, if anything, more costly than voice-only networks. Accordingly, NRIC respectfully submits that any reform of SLCs generally, and Connect America Fund ("CAF") support in particular, must recognize that these mechanisms are essential to the recovery of costs that a ROR ETC incurs and should remain in place unless and until other revenue sources materialize and are explicitly and fairly measured by future Universal Service Fund ("USF") mechanisms. Any resolution of the issues presented in Section XVII. O of the *FNPRM* must also provide each ROR ETC with the opportunity to recover its interstate allocated costs. Moreover, because SLCs and the Access Recovery Charge ("ARC") are essentially local rate additives, these

[23] *Id*. at para. 1326.

charges must also remain integral components for determining whether a local rate is comparable for purposes of CAF recovery.

A. Before Further Decreases to the RM Are Ordered, the Commission Should Consider Whether a ROR ETC Receives Sufficient Revenues to Recover Its Investment and Operating Costs.

Access revenues have provided and continue to provide a source of revenues necessary to cover the costs incurred for the deployment and operation of network investments made by ROR ETCs to provide the quality service that rural consumers require. Consequently, the RM that has been created to replace these access revenues is also a source of cost recovery for ROR ETCs. NRIC is therefore properly concerned regarding the Commission's inquiry in the *FNPRM* as to whether the reductions in RM should be accelerated.[24] The *Report and Order* reduces RM by five percent per year.[25] After five years, ROR ETCs will only be receiving 77% of the access revenues received at the beginning of the transition.[26] A reasonable conclusion is that some percentage of carriers will not be able to recover the costs of providing service at that point in time. If the RM is decreased further, the problem will be compounded. While the Commission states that it " believe[s] that five years is a sufficient time to adjust,"[27] NRIC is concerned that this statement may contemplate the Commission's requirement that an ROR ETC must adjust to a regulatory regime that provides for insufficient recovery of Commission-established interstate costs.

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[24] *Id.* at para. 1329.

[25] *See, Report and Order* at para. 894.

[26] $(0.95)^{\wedge 5} = 0.77$.

[27] *See*, *FNPRM* at para. 1329.

The Commission cannot simply assume that future revenues or efficiencies somehow will make up all deficits as support or ICC revenues decline. If this is the Commission's assumption, then the Commission must provide the facts that would justify such an assumption. NRIC knows of no such facts. Moreover, if the Commission believes that state sources will exist to "fill the gap," that belief is equally without basis. SLCs and ARCs are federally mandated charges, with at least a portion being interstate-allocated costs (100% for the SLCs and a varying percentage for the ARCs.) Moreover, at least for Nebraska, as a condition for receipt of Nebraska Universal Service Fund High Cost support, the support for the ROR ETCs that comprise NRIC is limited pursuant to regulations and a support distribution formula established by the Nebraska Public Service Commission. Thus, additional state USF support is not available from existing Nebraska state mechanisms to replace decreases in the RM.

After the five-year transition established by the Commission, some ROR ETCs may be recovering their interstate-allocated access costs because new revenue streams have materialized or efficiencies have been found. However, not all carriers will be able to do so. The Commission will need to determine whether each ROR ETC is recovering its costs and earning a reasonable return. This determination, in turn, will necessitate the very type of earnings test that NRIC has previously suggested in order to determine proper universal service-related recovery.[28] Moreover, after the initial five-year transition period ends, NRIC believes that it will be even more important to consider earnings when evaluating whether to implement further decreases in the RM.

[28] *See*, Comments of the Nebraska Rural Independent Companies, WC Docket No. 10-90, *et al.*, filed April 18, 2011 at 35-36.

While some may argue that earnings tests are complex, the Commission can create a simplified earnings test to ensure that a carrier is not over-earning.[29] Without such a test, many ROR ETCs could substantially under-earn and not have sufficient revenues to remain solvent, let alone to deploy broadband facilities. Meanwhile, other ROR ETCs could have excess earnings. Given the constraints on CAF funding, NRIC respectfully submits that it is only equitable to apply reasonable earnings constraints on disbursements to ensure that no carrier receives CAF disbursements that produce earnings above its authorized interstate rate of return and, at the same time, no carrier earns less than its authorized return. In this way, the CAF and the RM disbursements will ensure "sufficient" recovery required under Section 254 and not more than or less than sufficient recovery. A similar calculation could be undertaken by a state commission with respect to an ROR ETC's intrastate rate of return, as occurs in Nebraska.

NRIC also respectfully submits that the Commission should treat future RM for ROR ETCs differently than for price cap carriers.[30] First, because price cap carriers' access rates are no longer strictly tied to the underlying costs of the service, there is no current method – short of a full rate case – to determine whether the access revenues of price cap carriers materially exceed costs and thus are more than sufficient for purposes of complying with the directives from Section 254 of the Act. Second, because access revenue per line for a ROR ETC has declined less rapidly and is typically higher than for a price cap carrier, and thus RM per- line would be higher, a uniform percentage decrease in the RM will have larger rate impacts on ROR ETCs.[31]

[29] Regulated Revenues less Regulated Expenses divided by Net Rate Base should equal the company's authorized return.

[30] *FNPRM* at para. 1328.

[31] *See, Report and Order,* at para. 848. For price cap carriers, declining minutes of use have led to rapid and significant revenue declines whereas for rate-of-return carriers, access revenues have declined less rapidly as switched access rates have increased as minutes of use have declined. *See, id.* at para. 879. The Commission has observed that price cap carriers' intercarrier compensation

Third, special access revenues have been increasing at a higher rate for price cap carriers than for ROR ETCs.[32] Accordingly, price cap carriers can more easily make up for decreases in the RM through other revenue sources than can ROR ETCs.

B. Customer Charges, Such as SLCs and ARCs, Also Represent Cost Recovery for ROR ETCs and Should Not Be Discontinued Unless Other Cost Recovery Sources are Available.

SLCs and ARCs are cost recovery mechanisms for ROR carriers. As customers migrate to broadband, there will be fewer access lines that generate SLCs and ARCs. Thus, eventually ARCs and SLCs will not provide sufficient cost recovery to ROR ETCs even though the same "loop" and switching investment will be used for broadband-based services. However, because both ARCs and SLCs are cost recovery mechanisms, the Commission should not discontinue these mechanisms without creating a new source for the cost recovery where necessary to cover the costs of providing service.[33] This replacement source of cost recovery should be explicit support from the CAF or the federal USF, just as ARCs and SLCs today provide an explicit method to recover costs associated with voice service.

NRIC recognizes that replacing revenues from SLCs and/or ARCs would increase demands on the CAF or the federal USF. Nevertheless, such an increase would be required both by proper cost-recovery principles and by the sufficiency mandate of Section 254. As the Commission moves forward with its consideration of the issues noted in Section XVII. O of the

revenues have been declining at 10% per year while rate-of-return carriers' intercarrier compensation revenues have been declining at approximately three percent per year. *See, id.* at para. 892.

[32] *See, e.g.,* Comments of the Nebraska Rural Independent Companies, WC Docket No. 10-90, *et al.*, filed August 24, 2011 at 74.

[33] *See*, *FNPRM* at para. 1330.

FNPRM, therefore, NRIC respectfully recommends, once again, that the Commission should avoid any effort to divorce these mechanisms from underlying cost recovery requirements.

Aside from the SLCs and ARCs, another source for recovery of interstate costs is the interstate common line support ("ICLS"). Contrary to the suggestions in the *FNPRM* that ICLS should be eliminated, the ICLS support mechanism would be a very logical recovery mechanism if SLCs were eliminated[34] since ICLS and SLCs are both loop-related.[35] Because ICLS is calculated on a residual basis, any interstate common line cost not recovered from SLC revenues is recovered through ICLS. Similarly, if the Commission were to eliminate SLCs altogether, the entire interstate common line revenue requirement would need to be recovered from the ICLS mechanism. Accordingly, the ICLS mechanism is the rational choice for recovery of the interstate-allocated loop costs not recovered from the SLCs and otherwise avoids any issue regarding the need for revising the current separations process since any change would result in either improper recovery of interstate loop costs or a de facto shifting of those costs to the state jurisdiction.

Likewise, if the Commission decides to discontinue ARCs, the remaining cost recovery related to switched access should continue to be made from the RM. In this instance, the mechanics would be that ARCs would cease to be imputed in the calculation of the RM, which would mean that the RM from the CAF would need to increase.

C. SLCs and ARCs Are Local Rate Additives and Must be Included in Any Rate Comparability Determination.

[34] *Id.* at para. 1332.

[35] *See*, *e.g.*, 47 C.F.R. § 54.901(a).

NRIC does not believe that there is any reason for the Commission to increase SLCs.[36] The rate levels for SLCs have not been demonstrated to be improper nor has any demonstration been made that there should be any increased burden for local loop cost recovery for the end users served by ROR ETCs. Even if such a case would be made, however, the Commission must ensure that these charges are used as an offset for the determination of what is a comparable local rate for purposes of USF or CAF recovery. These charges are part of the local service rate that an end user is assessed and to disregard their levels when determining a comparable rate simply is not sustainable on a "real-world" basis from an end user's perspective. Accordingly, to increase SLCs in high cost areas raises significant concerns with respect to the reasonably comparable rate standards of the Act as well as violations of the requirements of Section 254(k) of the Act[37] which prohibits allocating costs in a way that imposes more than a reasonable share of joint and common costs on universal services.

D. Cost Allocation Requirements Are Already Addressed in Parts 32 and 64 of the Commission's Rules.

The Commission further makes inquiry concerning the allocation of local loop cost between regulated voice telephone service and other services, such as broadband Internet access, video or other non-regulated services.[38] NRIC respectfully submits that, for ROR ETCs, any concerns regarding cost allocations are already addressed by the Commission's rules and policies. However, these rules and policies must be properly applied. ROR ETCs submitting cost studies to the NECA pool are required to follow the Commission's cost allocation rules,

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[36] *FNPRM* at para. 1333.

[37] ***See*,** 47 U.S.C. § 254(k).

[38] *FNPRM* at para. 1331.

which specify the accounting and cost allocations required for asset transfers and service provisioning arrangements between regulated carriers and their non-regulated affiliates.[39] These rules were designed to protect ratepayers from subsidizing competitive ventures conducted by an ILEC's affiliates as well as the non-regulated offerings of an ILEC. NRIC respectfully submits that these rules ensure that local loop costs are properly assigned between the multiple services that may utilize the loop, including both regulated and non-regulated service offerings. Where concerns arise regarding compliance with those rules, such concerns can be addressed on a case-by-case basis.

III. THE REQUIREMENTS FOR INTERCONNECTION UNDER SECTION 251 OF THE ACT MUST BE FOLLOWED REGARDLESS OF THE ULTIMATE DETERMINATION AS TO WHETHER THE COMMISSION MAY LAWFULLY IMPLEMENT A "BILL-AND-KEEP" REGIME.

Apparently because the Commission has proposed establishment of a bill-and-keep regime for ICC, the Commission has a renewed interest in ensuring that the requirements regarding the Point of Interconnection ("POI") are properly understood and that concerns regarding arbitrage are addressed.[40] While NRIC appreciates this renewed interest, the decision to adopt bill-and-keep does not necessitate a change in the interconnection rules that already exist in the Act, but only requires reaffirmation of the proper interpretation and application of them in order to avoid the improper shifting of costs to a rural LEC.

Accordingly, NRIC respectfully suggests that the Commission reiterate the status of Section 251 requirements regarding interconnection, reaffirm that the principles which the

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[39] *See, e.g.,* 47 C.F.R. §§ 32.23 and 32.27, and § 64.901.

[40] *FNPRM* at para. 1316.

Commission has already enunciated regarding "escalating" levels of interconnection obligations, [41] and avoid inaccurate statements regarding alleged interconnection arrangements being applicable industry-wide. In NRIC's opinion, these actions by the Commission will not only avoid improper construction of the requirements of Section 251 but will also eliminate potential arbitrage opportunities that could otherwise be avoided. In addition, to avoid an administratively burdensome result, the Commission should specifically confirm the ability of carriers to establish terms and conditions for the provision of interexchange access through filing and maintaining exchange access tariffs for interexchange service and facility requirements.

First, NRIC respectfully suggests that the Commission should correct its statements regarding an industry-wide "single POI per LATA" concept under Section 251.[42] NRIC has already demonstrated that this concept is erroneous when it is applied in a manner that requires a ROR LEC to assume operational and financial responsibility for the provision of transport facilities beyond its established network facilities.[43] Reiteration of this incorrect statement by the Commission may create confusion and encourage certain parties to misuse and abuse the "single POI per LATA" concept. Therefore, the Commission should reject the notion that there is a "single POI per LATA" requirement applicable to rural ILECs.[44] This action will confirm the

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[41] *See, In the Matter of Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc. v. AT&T Corporation, Memorandum Opinion and Order,* File No. E-97-003, FCC 01-84, released March 13, 2001 ("*Total Communications*") at para. 25.

[42] *FNPRM* at para. 1316 citing *Application of SBC Communications Inc., Southwestern Bell Tel. Co, and Southwestern Bell Communications Service, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18390, para. 78, n.174 (2000) ("*SWBT Texas 271 Order*").

[43] *See,* Reply Comments of the Nebraska Rural Independent Group, WC Docket No. 10-90, *et al*., filed May 23, 2011 at 39-45. Rather than repeat the contentions noted therein, NRIC incorporates this portion of its May 23, 2011 reply comments herein.

[44] NRIC also notes that the *SWBT Texas 271 Order*'s POI discussion in paragraph 78 that the

proper applicability of the interconnection requirements under Section 251 of the Act, regardless of whether the compensation regime is bill-and-keep or some other form of ICC.

Accordingly, the Commission should affirm the following principles established by the Act, judicial decisions and the Commission:

(1) A POI must be at a technically feasible point *within the ILEC's network*; [45]

(2) It is unlawful to impose a transport requirement upon the ILEC that is superior to that which the ILEC provides to its own end users and/or affiliates and thus violates the "equal in quality" requirement found in Section 251(c)(2)(C);[46] and

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Commission cites in Footnote 2378 in the *FNRPM* was based *solely on a provision within an agreement between SWBT and MCI in the context of a Section 271 proceeding*. The full text of that FCC-provided citation referenced in paragraph 78 (in footnote 174) of the SWBT Texas 271 Order is as follows:

> *See*, SWBT Texas II Application, App. 5, Tab 45, MCI (WorldCom) Agreement Attach. 4, § 1.2.2. Section 1.2.2 of the WorldCom Agreement states: 'MCI(WorldCom) and SWBT agree that MCI (WorldCom) may designate, at its option, a minimum of one point of interconnection within a single SWBT exchange where SWBT facilities are available, or multiple points of interconnection within the exchange, for the exchange of all traffic within that exchange. If WorldCom desires a single point for interconnection within a LATA, SWBT agrees to provide dedicated or common transport to any other exchange within a LATA requested by WorldCom, or WorldCom may self-provision, or use a third party's facilities.' SWBT Texas II Application, App. 5, Tab 45, WorldCom Agreement Attach. 4, § 1.2.2.
>
> WorldCom Agreement Attach. 4, § 1.2.2.

SWBT Texas 271 Order, para. 78 and n. 174. This forms an independent basis for suggesting the existence of a general "single POI per LATA" requirement as it arises solely from a private contract. No private agreement can bind entities not a party to such an agreement, let alone create a general rule or policy applicable to the entire telecommunications industry

[45] 47 U.S.C. § 251(c)(2)(B) (emphasis added).

[46] 47 U.S.C. § 251(c)(2)(C) (The duty to provide interconnection must also be one "that is at least equal in quality to that provided by the local exchange carrier to itself. . . ."). To be sure, the imposition of a superior form of interconnection is unlawful. *See Iowa Utils. Bd. v. Federal Communications Commission*, 219 F.3d 744, 758 (8th Cir. 2000); *see also, Iowa Utils. Bd. v. F.C.C.*, 120 F.3d 753, 813 (8th Cir. 1997) at 813 (Competitive carriers requesting interconnection should have access "only to an incumbent LEC's *existing* network -- not to a yet unbuilt superior one"; the nondiscrimination aspect of the Act "merely prevents an incumbent LEC from arbitrarily treating some of its competing carriers differently than others; it does not mandate that incumbent LECs cater to every desire of every requesting carrier."(emphasis in original)).

(3) Since the Section 251 interconnection obligations found in Sections 251(a), (b) and (c) reflect an escalating set of interconnection obligations,[47] there can be no more onerous requirements imposed upon an ILEC under a Section 251(a) or a Section 251(b) obligation or a combination of both than that required of the ILEC under Section 251(c).

By applying these requirements, the Commission should also reaffirm that nothing in the Act, prior Commission decisions, or other policies impose on any rural ILEC a transport obligation beyond its side of the POI/interconnection point with another carrier, let alone transport beyond the rural ILEC's network. Such an affirmation will stave off unwarranted efforts to circumvent the law through arbitrage. In addition, reaffirmation of the above principles will also ensure the proper location of the demarcation point at which a rural ILEC's network obligations begin and end – the POI – as well as the proper cost recovery for facilities connected to the POI.

NRIC respectfully submits that these affirmations are particularly appropriate now that there is a migration of the network from Time Division Multiplexing ("TDM") protocols to Internet Protocol ("IP") (or packet switched) based protocols. As explained in Section IV, *infra*, NRIC agrees with the Commission[48] that the operative language of Section 251 is technology-neutral. Thus, affirmation of the principles noted above will ensure that entities do not use the transition from TDM to IP protocols as a means to unlawfully foist added costs and obligations on rural ILECs.

Second, NRIC also respectfully suggests that, by reiterating the proper application of Section 251(c) requirements as noted herein, coupled with the *Total Communications* discussion of escalating interconnection obligations, the Commission need not specifically define the network

[47] *See, Total Communications* at para. 25.

[48] *See, e.g.*, FNPRM at para. 1342.

edge under a bill-and-keep approach.[49] Rather, the Commission need only affirm that the "edge" is at the actual POI within the rural ILEC's network. Consistent with this approach and the Act's requirements, the Commission also should affirm that, regardless of the form of ICC arrangement (*i.e.*, bill-and-keep or otherwise), the terminating rural ILEC would not be expected to incur additional costs beyond the "edge" of the rural ILEC's network, *i.e.*, the POI located within its network.

Finally, NRIC disagrees with the Commission's stated preference that carriers should be encouraged to transition the existing access charge regime to negotiated interconnection agreements ("ICAs") covering the same service.[50] NRIC respectfully submits that it makes *no* sense to eliminate exchange access tariffs, particularly since originating access and transport have not been eliminated by the *Report and Order* and terminating access will remain in place for years (even if courts were not to overturn bill-and-keep on appeal). While carriers may want ICAs to describe the methods by which exchange access may be provided, tariffs remain an efficient and readily understandable industry mechanism for the ordering of services and facilities that a requesting carrier may need for its interexchange services. ROR ETCs should not be required to undertake the administratively burdensome and time-consuming process of negotiating and entering into numerous agreements that the elimination of access tariffs would entail. Therefore, ROR ETCs should be allowed to continue to file tariffs subject to approval by the appropriate regulatory authority as long as the ROR ETCs' rates, terms, and conditions meet Commission and state commission rules and requirements.

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[49] *See*, *id*. at para. 1321.

[50] *See*, *id*. at para. 1323.

IV. IP-TO-IP INTERCONNECTION REQUIRES ESTABLISHMENT OF GENERAL FEDERAL DIRECTIVES AND IMPLEMENTATION BY THE STATES, EXCEPT IN A LIMITED NUMBER OF CIRCUMSTANCES.

The *FNPRM* posits a host of questions with respect to the framework for IP-to-IP interconnection along with related issues regarding the migration from a TDM-to-IP world for exchanging voice traffic.[51] NRIC does not believe that there is any need to "reinvent-the-wheel" for IP-to-IP interconnection or for ICC obligations regarding IP-to-TDM voice traffic or TDM-to-IP voice traffic. The interconnection framework that clearly defines proper interconnection arrangements for the exchange of traffic under Section 251/252 has been in place for 16 years. The principles enunciated under Section 251 – and in particular that any POI must be at a technically feasible location within the ILEC's network – ensure that parties seeking an IP interconnection cannot impose on the terminating ILEC obligations and costs that are their own responsibility under the law.[52] Likewise, the Section 251/252 framework invalidates any claim that a carrier can avoid making ICC payments because it has requested IP-related interconnection pursuant to a commercial agreement that is *not* subject to regulatory oversight.

A. The Primary Goal of Any IP-to-IP Interconnection Framework Must be Reasonable and Comparably Priced Services to Consumers.

From the outset, NRIC respectfully submits that any public policy and interconnection regime envisioned for either TDM-IP (and vice versa) and IP-to-IP must consider how that regime would affect the availability of reasonable, comparably priced services to retail customers. Retail end user customers that need IP-based voice service or access to the public

[51] *See*, *id.* at paras. 1335, 1341-1350, 1352-1398.

[52] *See*, Section III, *supra*.

Internet must remain the ultimate beneficiaries of Commission action in the interconnection area. As such, the continuing ability of ROR ETCs to provide reasonable, comparably priced retail services will be critical to the success of any new policy. To that end, NRIC respectfully suggests that the Commission should meld the various aspects of the *Report and Order* and the *FNPRM* into a unified whole to ensure that the interconnection standards being discussed in the *FNPRM* are well articulated with the ICC and with the USF/CAF-related recovery mechanisms. Only this kind of coherent overall policy can lead to sufficient, predictable support and the kind of stable policy environment that will foster the development of advanced voice and broadband networks.

To some extent, the beginning of a coherent, overall framework has begun. With respect to Voice over Internet Protocol ("VoIP") services, NRIC notes that certain ICC standards have been established in the *Report and Order*.[53] Nevertheless, more needs to be done. Regarding access to the public Internet, NRIC has already articulated the need to ensure that middle mile transport obligations are properly recovered through the CAF.[54] NRIC respectfully submits that both of these mechanisms are necessary, integral elements of any IP-based (IP-to-TDM and IP-to-IP) interconnection framework applicable for access to the public Internet since the sufficiency and predictability of such mechanisms will be reflected in the rates charged to consumers.

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[53] *See*, *Report and Order* at 944. NRIC notes, however, that questions may exist as to the legality of aspects of its framework.

[54] *See,* Comments of the Nebraska Rural Independent Companies, WC Docket No. 10-90, *et al*., filed January 18, 2012 at 77-86.

B. The Section 251/252 Framework Provides the Working Foundation for IP-to-IP Interconnection and IP-to-TDM Interconnection.

NRIC agrees with the Commission that Section 251 of the Act is technology neutral.[55] Consequently, NRIC respectfully suggests that the only prudent and legal basis for resolving the issues in Section XVII. P the *FNPRM* is to apply the time-tested Sections 251/252 interconnection framework. This step will ensure that any migration from TDM to IP-based transmission technologies and then to IP-to-IP technologies is not hampered by those entities with the ability to exercise market power under a new, untried regulatory framework. As a result, NRIC respectfully submits that the Commission should make clear that:

1. Entities meeting the definition of "common carriers" are telecommunications carriers regardless of transport protocol used;

2. Entities that are telecommunications carriers have the right to seek IP-to-IP interconnection from an ILEC under Section 251 of the Act;

3. Entities that seek interconnection under Section 251 of the Act are eligible to have any unresolved issues determined under the procedures and standards found in Section 252 of the Act; and

4. Entities are prohibited from imposing interconnection requirements upon an ILEC that are superior to those (*i.e.*, are "more" than equal to those) provided by the ILEC to its end users or to its affiliates.

[55] *Id*. at para. 1342. For example, the term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, *regardless of the facilities used*." 47 U.S.C. § 151(53) (emphasis added). The operative language that is noted – "regardless of the facilities used" -- envisions both TDM protocol-based facilities as well as IP-based protocol facilities. Likewise, "telephone exchange service" is also defined with technology neutrality in mind, specifically envisioning that such service includes "comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service," 47 U.S.C. § 153(54), thereby negating any concerns with respect to IP transport used with regard to such service. *FNPRM* at para.1389.

The foregoing points are the foundations for the current Section 251/252 framework, which has been developed in many orders and case decisions over the last 16 years. These points are also entirely consistent with the lawful framework discussed in Section III, *supra*, as well as the proposal to continue to use exchange access tariffs as an efficient method of providing network services. Reaffirming and applying that framework now will avoid shenanigans such as a carrier suggesting that its status has been somehow transformed because it uses a particular protocol to exchange traffic, or a carrier ignoring the structure of the Act in an effort to gain an unfair market advantage. These types of maneuvers may be somewhat mitigated as a result of the Commission's decisions regarding ICC for VoIP traffic, but broader action is nonetheless needed to ensure that current level of PSTN connectivity is not lost.

NRIC is concerned that certain questions raised in the *FNPRM* may be twisted by entities to suggest that the migration from TDM to IP has somehow magically changed the PSTN into a new network subject to new rules outside the existing statute. The fact that the network is changing from TDM to IP protocol does not change the common carrier obligations of entities that exchange traffic, nor does that migration alter the interconnection framework envisioned by the Act. In confirming that the Section 251/252 framework applies to TDM-IP and to IP-to-IP interconnection, the Commission can end ambiguity and confusion, and eliminate artificially created arbitrage opportunities.

NRIC also respectfully submits that the Commission should make clear that the use of North American Numbering Plan resources[56] triggers the application of the Section 251/252 framework and the associated ICC regimes. This objective trigger not only ensures that the exchange of traffic using telephone numbers is routed regardless of the technological protocol

[56] *See*, Comments of the Nebraska Rural Independent Companies, WC Docket No. 10-90, *et al*., filed August 24, 2011 (the "NRIC ABC Plan Comments") at 56-57.

used, but also ensures that carriers avoid gamesmanship with respect to which ICC regime applies.

C. Specific Guidance from the Commission to Eliminate "Commercial Agreements" and to Develop Technical Standards Still is Required.

NRIC understands and appreciates that certain issues need to be addressed by the industry in the transition from a TDM to an IP-to-TDM, and ultimately to an IP-to-IP network. In two areas in particular, NRIC respectfully submits that the Commission can be most helpful.

First, specific Commission guidance is necessary in order to provide a readily available venue before a regulatory body to address the rates, terms and conditions under which interstate transport to the public Internet beyond the middle mile transport (which is being addressed separately in Section XVII. B of the *FNRPM*).[57] NRIC respectfully submits that the Commission should reject notions that the rates, terms and conditions for IP interconnection and services are subject to "commercial agreements." The Commission properly questions the propriety of a "commercial agreement" model,[58] and NRIC has already demonstrated that such arrangements simply amplify the market power and lop-sided bargaining positions of the largest carriers.[59]

Therefore, to the extent that the Commission determines that these transport arrangements to the public Internet beyond the middle mile are not otherwise addressed under

[57] The providers of this transport, such as Verizon and AT&T, are common carriers/telecommunications carriers under the Act, even in the provision of transport to the public Internet. The fact that the telecommunications carried over the facilities may be public Internet traffic does not alter the character of those facilities or the character of the entities providing that transport. NRIC is concerned that without specific guidance from the Commission, these "backbone" Internet transport providers may utilize their market power to exact charges that make full connectivity to the public Internet unreasonably expensive.

[58] *FNPRM* at paras. 1375-1377.

[59] *See*, NRIC ABC Plan Comments at 58-59, 60.

the Section 251/252 framework, regulatory oversight must be provided to ensure that the promise of reasonably priced access to the public Internet is not thwarted. NRIC respectfully submits that Commission action is necessary to prevent potential abuse of market power that such IP backbone providers may possess, especially if backbone providers establish POIs in distant locations that require smaller providers to pay transport charges (a result antithetical to reasonably priced access to the public Internet).[60]

Second, in NRIC's view, specific guidance is required in the area of establishing technical standards for IP-to-IP interconnection. Specifically, NRIC recommends that the Commission adopt overall IP technical standards after review and consultation with industry technical standards working groups.[61] Assurance that all carriers will be meeting the same technical standards is of paramount importance in the migration to the IP world. Technical standards will ensure that, as ROR ETCs deploy IP transmission capability deeper into their networks, such new investment will not be technically "incompatible" with that of other carriers. Any actual or perceived technical incompatibility, in turn, should be avoided to ensure the continuation of the expectation that all end users' calls will be completed.

V. CONCLUSION

For all of the reasons provided in the foregoing Comments, NRIC respectfully submits that the Commission should adopt and incorporate, the positions set forth in the foregoing Comments into its efforts to address the issues raised in the specific sections of the *FNPRM* addressed herein.

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[60] *FNPRM* at para. 1367.

[61] *See*, Comments of the Nebraska Rural Independent Comments, WC Docket No. 11-119, filed August 15, 2011 at 11-14. These Comments are incorporated herein by reference.

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Respectfully submitted,

Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Co., K. & M. Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telecom, Inc., and Three River Telco

The Nebraska Rural Independent Companies

By: Paul M. Schudel

Paul M. Schudel, No. 13723
pschudel@woodsaitken.com
James A. Overcash, No. 18627
jovercash@woodsaitken.com
WOODS & AITKEN LLP
301 South 13th Street, Suite 500
Lincoln, Nebraska 68508
(402) 437-8500

Thomas J. Moorman
tmoorman@woodsaitken.com
Woods & Aitken LLP
2154 Wisconsin Ave. NW, Suite 200
Washington, D.C. 20007
(202) 944-9502
Their Attorneys